

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6430 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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JALSING RAMSINDH SENGAR

Versus

COMMANDOR

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Appearance:

MR Amar Bhatt for Mr. SN SOPARKAR for Petitioner

MR SP HASURKAR for Respondent No. 1

Mr.S.T.Mehta, AGP for Respondent No. 2

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CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 18/09/98

ORAL JUDGEMENT

By means of this petition, the petitioner has sought for quashing of the dismissal order dated 30.3.88 of the Commander, State Reserve Police, Grade

VII, Nadiad which was confirmed in appeal by the Deputy Chief Police Officer, Armed Unit, Gujarat State, Ahmedabad vide his order dated 2.9.1988.

2. The petitioner was working as a constable in the Armed Force, Gujarat State. He was married to Smt. Gomtidevi about 30 years go and lateron he contracted second marriage with one Taradevi about 18 years. Therefore, the petitioner was charged for grave misconduct which is unbecoming of discipline of the police department. During the inquiry, the petitioner admitted that he had contracted the second marriage with Taradevi subject to certain conditions and with the permission of the previous wife. During the inquiry, it was wrongly considered that he had no an issue from his first wife. In fact, there is no issue from his first wife. During the inquiry, it was considered that the second marriage is illegal. Hence, this action on the part of the petitioner amounts to grave misconduct Andy was ordered by the disciplinary authority to be dismissed from service by the disciplinary authority vide order dated 30.3.88.

3. The petitioner being aggrieved by the said order dated 30.3.88 of the disciplinary authority preferred an appeal before Special Chief Officer, Armed Unit, Gujarat State, Ahmedabad. The appellate authority considered that the petitioner has committed grave misconduct which amounts to unbecoming of discipline of the police department. Though he had already married as per Hindu customs before about 30 years with first wife Gomtiben, residing in a vilage of District Gandhinagar, without obtaining any prior permission of the Government, he married second time to Taradevi, residing at Sector 28, Gandhidham village Adiwada about 14 years back. The petitioner could not produce any evidence that he was justified in contracting second marriage and he could not substantiate the second marriage nor he sought for permission for that purpose from the Government. Though the petitioner admitted this offence and in support of his contention that his first wife was not mentally sound, he could not produce any medical evidence or evidence in that respect nor he obtained any prior permission from the Government or any order of the Government regarding his second marriage. Though the petitioner stated that he had obtained permission from the first wife as well as parents, but that is not required under law. Hence that permission if any taken cannot be considered to be a ground for second marriage.

4. In view of the admission on the part of

the petitioner, the disciplinary authority was correct in awarding punishment of dismissal and that was also confirmed by the appellate authority baits order dated 2nd September, 1988.

5. The learned counsel for the petitioner pressed this petition only for substitution of punishment of compulsory retirement in place of dismissal on the ground that two other constable of the same group namely Nagjibhai and Baliram Patel were similarly charged and they were not meted out an extreme penalty under service law and they were ordered to be compulsorily retired and they were entitled for the benefit of gratuity and other retiral benefits and for the same facts as well as charges the petitioner has been discriminated in view of the decision taken in the case of aforesaid two constables. The petitioner is also entitled for the same treatment though the petitioner also contended that he has been awarded extreme penalty for the misconduct and that misconduct has not been defined either in the Bombay Police Act, 1951 or in the Police (Punishment and Appeal) Rules, 1956. Hence, he was not liable for any misconduct which is not defined in the provisions of law. He relied on an unreported decision dated 24.9.1985 of this Court in the case of Karsanbhai Dahyabhai Parmar and others vs. State of Gujarat and others delivered in Special Civil Application No. 221 of 1983 by this Court (Coram: N H Bhatt, J, as he was then) on 24.9.85 in which it is held tha when penal consequences are attached to a particular conduct, that conduct must be specifically stated to be a misconduct under the provisions of law. In the case of Rasiklal vs. Ahmedabad Municipal Corporation reported in AIR 1985 (SC), 505 it is held that unless either in the in the Certified Standing Order or in the service regulation and the act or omission prescribed as misconduct it is not open to the employer to punish the workman eventhough the alleged misconduct eventhough the alleged misconduct would not be an comprehended in any of the enumerated misconduct.

6. The learned counsel for the respondent State was not able to show any statutory provisions defining misconduct in regard to the conduct of the petitioner. I am not going to determine whether the act of the petitioner is a misconduct or not but it is certainly an offence punishable under Indian Penal Code. There may be certain service condition rules wherein the second marriage is prohibited or Government servant is not permitted to contract a second marriage unless with the permission of the Government in special circumstances of the case. In the present case, the petitioner has

failed to establish the special circumstances in which he had to contract a second marriage and he also did not obtain any permission from the authority concerned for the second marriage. In view of the facts discussed above, the disciplinary authority was justified in awarding punishment. But we have to see whether punishment awarded is disproportionate and can be substituted by any other punishment. In this respect, the learned counsel for the petitioner referred the assertion made in para-8 of the petition that two other persons namely Nagjibhai Dholabhai and Baliram Bhatole were similarly charged but they were not meted out this highest penalty under the service law, but they were compulsorily retired so that their benefits of gratuity, pension and other service benefits would not be forfeited. The petitioner has not been dealt with in the same manner though the petitioner is entitled for the same treatment. Under rule 3(1), the following punishment can be imposed upon any police officer by the disciplinary authority.

- (i) Reduction in rank, grade or pay or removal from any office of the distinction or withdrawal of any special emoluments.
- (a)(i) Compulsory retirement.
- (ii) Removal of service which does not disqualify from future employment in the department other than the Police Department.
- (iii) Dismissal which disqualifies from employment in the Government service.

Other manner of punishment has also been provided in sub rule (ii) of Rule 3. Under Rule 4, major punishments are A(1)(A(2) (i)(a)(ii) and (iii) of Sub-rule (1) of Rule 3. The department is required to hold an inquiry into his conduct and after conclusion of the inquiry, punishment can be recorded.

7. The respondents have not filed any affidavit in reply to controvert the assertion in para-8 or the learned AGP was able to controvert the contention of the learned counsel for the petitioner that the punishment of the petitioner can be substituted by another punishment of compulsory retirement. In view of that position, the petitioner would be able to get retiral benefits as in the case of two other constables which is mentioned in para-8 of the petition.

8. In the facts and circumstances of the case, the extreme penalty awarded by the department can be substituted by another penalty which has been provided

by department to other persons in similar facts and circumstances with compulsory retirement.

9. Accordingly, the petition is partially allowed. The impugned orders dated 30.3.88 Annexure "A" and dated 2.9.1988 at Annexure "B" are hereby quashed and set aside. The extreme penalty of dismissal awarded by the disciplinary authority and confirmed by the appellate authority is substituted by that of punishment of compulsory retirement from the date of which the disciplinary authority awarded extreme penalty of dismissal. Rule is made absolute accordingly with no order as to costs.

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